

REMARKSRegarding the Amendments to the Specification presented in this reply:

The amendments to the specification add no new matter.

Regarding the Objection to the Specification:

The amendments to the specification render the Examiner's objection to the specification moot.

Regarding Priority:

The Office action asserts that:

- 1.) support for the instant claims was not found in US 09/347,531; and
- 2.) since a translation of DE 100 30 976.2 was not provided, priority was not granted back to the filing date of the German application.

With regard to 1.), the Office action further asserts that "support for the limitations in claims 1, 9, 14 and 15 with regard to the genus of nucleic acids encoding derivatives of SEQ ID NO: 1 is not found in the '531 application. Also, no support of the percent homology limitations in claims 1, 9, 14 and 15 is found in the '531 application, [and] no support for the at least 1 mol% of unsaturated fatty acids is found in the '531 application."

With regard to 1.), the Examiner is kindly directed to claim 1 of the '531 application, which recites "polypeptide having delta6 desaturase activity and having the amino acid sequence described in FIG. 1 or [an] amino acid sequence derived from FIG. 1 by insertion, deletion or substitution of up to 40% of the amino acids." and page 2, lines 6 – 14, which further describes homology ranges of "up to 40%, preferred up to 20% of all amino acids of FIG. 1." Accordingly, because the homology ranges of claims 1, 9, 14 and 15 would each be readily considered by a skilled artisan to be inherently supported by the range described in the '531 application, support for the subject matter is provided. (See MPEP 2163.05(III) "With respect to changing numerical range limitations, the analysis must take into account which

ranges one skilled in the art would consider inherently supported by the discussion in the original disclosure. In the decision in *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976), the ranges described in the original specification included a range of “25%- 60%” and specific examples of “36%” and “50%.” A corresponding new claim limitation to “at least 35%” did not meet the description requirement because the phrase “at least” had no upper limit and caused the claim to read literally on embodiments outside the “25% to 60%” range, however a limitation to “between 35% and 60%” did meet the description requirement.” Additionally, the Examiner is further kindly directed to page 6, lines 25 – 40 of the ‘531 application, which specifically describes experimental results pertaining to the % production of fatty acids of an expression construct carrying the delta6 fatty acid desaturase and which clearly set forth support for at least 1 mol% unsaturated fatty acid based on the total fatty acid content.

With regard to 2.), Applicant has submitted herewith a certified copy of DE 100 30 976.2 and a translation thereof. Applicant has further submitted a translation of PCT application, PCT/EP00/06223, filed on July 04, 2000.

Regarding the Claim Rejections:

The Examiner has rejected: claims 1 – 4, 7 – 9, 13 – 14 and 15 under 35 U.S.C §102(a) over *Girke et al.* (Plant J., July, 1998, Vol. 15(a), pp. 39 – 48); and claims 5 – 6 and 10 under 35 U.S.C §103(a) over Girke et al. in view of *Napier et al.* (Curr. Opin. Plant Bio. Apr., 1999 2: 123 – 127).

The enclosed Affidavit or Declaration under 37 C.F.R. §1.131, accompanied by a showing of facts that establishes that the present invention was reduced to practice prior to July 27, 1998, antedates the *Girke et al.* reference. Both claims rejections are, therefore, moot.

In Conclusion:

The present application is in condition for allowance. Applicants request favorable action in this matter. In order to facilitate the resolution of any issues or

questions presented by this paper, the Examiner is welcome to contact the undersigned by phone to further the discussion.

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Enclosures (2):

- Translation of PCT/EP00/06223, and
- Translation of DE 100 30 976.3.